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**International
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TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Public Document

Decision on a number of procedural issues raised by the Registry

Order to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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HAVING REGARD to articles 64, 67 and 69 of the *Rome Statute* (“the Statute”), rules 54, 67 and 88 of the *Rules of Procedure and Evidence* (“the Rules”), and regulations 44, 52 and 54 of the *Regulations of the Court* (“the Regulations”), Trial Chamber II (“the Chamber”) of the International Criminal Court (“the Court”), hereby makes the following decision.

Issues

This decision deals with a number of diverse procedural questions of a mostly practical nature, which were raised by the Registry. It also addresses the question as to whether one of the accused, Mr. Katanga, is entitled to simultaneous interpretation into Lingala during hearings.

I. BACKGROUND AND SUBMISSIONS

1. The Chamber recalls that the first status conference in the present case was held on 27 and 28 November 2008.¹ In anticipation of this conference, the Chamber addressed a number of specific questions to the parties and participants, as well as to the Registry, and invited them to “set out the issues and observations which they deem relevant and on which they would like the Chamber to rule.”²

2. In its submissions of 24 November 2008, the Registry raised several ‘matters for consideration’ by the Chamber.³ The Division of Court Services raised the issues of familiarization⁴, in-court assistance⁵, contacting witnesses of other parties⁶, dual

¹ «Ordonnance fixant la date d’une conférence de mise en état (règle 132 du Règlement de procédure et de preuve)», 6 November 2008, ICC-01/04-01/07-739

² “Order Instructing the Participants and the Registry to Respond to Questions of Trial Chamber II for the Purpose of the Status Conference (article 64(3)(a) of the Statute)”, 13 November 2008, ICC-01/04-01/07-747-tENG, par. 5

³ “Response to the questions raised by Trial Chamber II on 13 November 2008 and additional observations”, 24 November 2008, ICC-01/04-01/07-765

⁴ *Id.*, p. 6

⁵ *Id.*, p. 7

⁶ *Id.*, p. 7

status of victims and witnesses⁷, witness testimony from a remote location⁸, live broadcast of audio-visual recordings⁹, the use of visual aids¹⁰, interpretation into Lingala for the benefit of the accused¹¹ and the hearing schedule.¹²

3. During the status conference held on 28 November 2008, the Chamber heard the representatives of the Registry on most of these points.¹³

4. Following the status conference, the Chamber issued an order on 10 December 2008 in which it requested the Registry to submit further documents to the Chamber, providing more detailed information about the issues raised prior and during the status conference. On 16 December 2008, the Victims Participation and Reparations Section (“VPRS”) filed its documents.¹⁴ The Chamber dealt with most of the questions raised by the Victims Participation and Reparations Section in its decision of 26 February 2009¹⁵ and will treat the outstanding questions relating to the participation of victims in the proceedings in a separate decision.

5. The Division of Court Services filed its submissions on 12 January 2009¹⁶ and, after having obtained an extension of the time limit¹⁷, filed the remainder on 21

⁷ Id., p. 7

⁸ Id., p. 7

⁹ Id., p. 8

¹⁰ Id., p. 8

¹¹ Id., p. 8

¹² Id., p. 8

¹³ ICC-01/04-01/07-T-53-ENG

¹⁴ «Rapport complémentaire du Greffe sur diverse questions liées au traitement des demandes de participation conformément à l'ordonnance du 10 décembre 2008», 16 December 2008 ICC-01/04-01/07-796.Conf and the annexes thereto, which were filed the day after.

¹⁵ « Décision relative au traitement des demandes de participation », 26 February 2009, ICC-01/04-01/07-933

¹⁶ Rapport du Greffe relatif à l'ordonnance de la Chambre de première instance II enjoignant aux participants et au Greffe de déposer des documents complémentaires, 12 January 2009, ICC-01/04-01/07-821

¹⁷ Ordonnance relative à la demande du Greffe visant à proroger un délai (norme 35 du Règlement de la Cour), 14 January 2009, ICC-01/04-01/07-826

January 2009.¹⁸ The submissions of 12 January 2009 expanded on the following issues: real-time transcripts¹⁹, access to the audio-visual broadcast of hearings²⁰, the use of visual aids²¹ and the hearing schedule.²² The 21 January submissions included issues formulated on behalf of the Victims and Witnesses Unit (“VWU”), namely: witness familiarisation²³, assistance of vulnerable witnesses during hearings²⁴, contact between parties and witnesses called by other parties²⁵, the dual status of victims and witnesses²⁶ and the practical arrangements for bringing witnesses to the seat of the court for giving evidence.²⁷

6. As a preliminary comment, the Chamber notes that some of the points raised by the Registry are of a more informational nature, rather than formal requests. Moreover, some of the submissions concern issues which the Chamber considers to relate to the internal functioning of the Registry and do not raise any immediate questions which require judicial intervention. The Chamber is therefore not in a position to make a determinative ruling on these issues. At the same time, the Chamber understands that the Registry raised these issues because it considered them important for the smooth functioning of the proceedings on a purely practical level. This is a laudable concern, which is undoubtedly shared by all involved in these proceedings. To the extent that there are no disagreements, the Chamber will therefore simply take note of the proposals made by the Registry and expect the parties to adhere to them.

¹⁸ «Rapport du Greffe relatif à l'ordonnance de la Chambre de première instance II enjoignant aux participants et au Greffe de déposer des documents complémentaires», 21 January 2009, ICC-01/04-01/07-842-Conf

¹⁹ ICC-01/04-01/07-821, p. 4

²⁰ Id., p. 7

²¹ Id., p. 8

²² Id., p. 9

²³ ICC-01/04-01/07-842-Conf, p. 4

²⁴ Id., p. 5

²⁵ Id., p. 6

²⁶ Id., p. 7

²⁷ Id., p.8-9

II. ANALYSIS

A. Prior notice about closed or *ex parte* hearing

7. The Registry recommended that the Chamber order the parties and participants that, before a witness is called, they shall specify whether the hearing, during which the witness is scheduled to give testimony, is to be held *in camera* or *ex parte*.²⁸

8. As the general principle is that all hearings should be held in public, the Chamber considers that whenever a party is of the view that special measures are required for a certain witness, including hearing the witness *in camera* in accordance with Rule 88(3)(e), that party should petition the Chamber well in advance of the scheduled date of the testimony in order to allow it to consult with the VWU and to decide on the request. It is the responsibility of the party calling the witness to provide the Chamber with all the necessary information to enable it to make the appropriate determination. If any consultations with the VWU are necessary, the Chamber urges the parties to enter into contact with the unit before seizing the Chamber of a formal request for special measures in order to streamline the entire process.

B. Access to real-time transcripts

9. The Registry draws attention to a technical problem, which makes it difficult to switch from open to closed session and keep control over the number of persons who have access to the real-time transcript at the same time. To remedy this problem, the Registry suggests that access to real-time transcripts should always be limited to a certain number of identified persons who have an operational need to have access to the transcripts, whether the hearing is open or closed.

²⁸ ICC-01/04-01/07-821, p. 7

10. The Chamber notes, however, that since the Registry has formulated this request, it has implemented a new system for the provision of real-time transcripts, which offers broader possibilities for managing access rights. The Chamber therefore assumes that, unless the Registry indicates otherwise in new submissions to the Chamber, the request has become moot.

C. Live Audio-Visual Broadcasts of Hearings

11. With regard to the real-time broadcast of audio-visual footage of the hearings a similar problem as the one discussed above arises. The Registry suggested that access to the real-time broadcasts of closed hearings should be limited to a select number of technical personnel.²⁹ The Office of the Prosecutor (“Prosecution”), on the other hand, suggested that a similar system as for real-time transcripts could be envisaged and that the same persons who have access to the latter should also have access to the real-time audio-visual broadcast of closed hearings.³⁰

12. The Chamber was informed by the Registry that the Prosecution’s proposal is not technically feasible, as the system for the distribution of audio-visual broadcasts of hearings does not allow for the required level of control over access rights. As no other technical solutions appear immediately available, the Chamber endorses the Registry’s suggestion to limit access to audio-visual broadcasts of closed hearings to the relevant technical personnel, but urges the Registry to find a solution to the technical limitations of the current system.

D. Visual Aids in Court

13. In its submissions, the Registry drew attention to regulation 52 of the Regulations of the Registry and expressed the view that the responsibility for the presentation of items of evidence via *Ringtail* in the courtroom should “continue to

²⁹ *Id.*, p. 8

³⁰ ICC-01/04-01/07-855, par. 13

lie with the court officer".³¹ The Registry further reminded the Chamber of the practice by the Prosecution, during the confirmation of charges hearing, to rely on an animated electronic presentation. It informed the Chamber that if the Defence wishes to use similar technology, the Registry is capable of providing this, provided it receives a request to that effect at least two weeks in advance.

14. The Chamber agrees with the Registry that during hearings the presentation of items of evidence through the *E-Court* system is the responsibility of the court officer of the Registry. In the hypothesis that the Chamber would allow the parties to use audio-visual aids for making particular presentations, the Chamber draws the attention of the parties to the requirement that they must provide the Court Officer with all the items of evidence to which reference is made in the presentation, via the same "daily list" as is used for other items of evidence, in accordance with regulation 52 of the Regulations of the Registry, in advance of the hearing. This will allow the Registry to present the items of evidence during the hearing, in the case of a party or the Chamber wanting to examine it.

15. The Chamber notes the suggestion by the Registry that any request by the Defence to have the same visual aids at its disposal as the Prosecution, must be made at least two weeks in advance.

16. The Chamber further notes the practice of Trial Chamber I to allow the Prosecution to present video evidence directly from its bench, rather than via the Court Officer. This practice appears to offer a sensible solution, which should also be open to the Defence teams, if they so wish.

³¹ According to the Registry, "This is to prevent any tampering with the evidence between its presentation to the hearing and its filing in the electronic record." ICC-01/04-01/07-821, p. 8.

E. Witness familiarisation

17. The Registry requested that parties calling a witness to testify at trial should inform the VWU at least 35 days prior to the arrival of the witness in The Hague of the length of period of time the witness will need to consult his or her own statements in order to refresh his or her memory.³²

18. The Chamber takes note of the decisions of Trial Chamber I on the issue of witness familiarisation³³ and the “Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial”, dated 16 January 2009.³⁴ A priori, the Chamber has no comments on the matter, but it takes note of the necessity for the party calling the witness to provide an accurate estimation of the time required by the witness to read his or her previous statements at least 35 days prior to the scheduled arrival at the location of the Court. The Chamber believes that this is a reasonable request and encourages all parties and participants to adhere to it.

F. Assistance rendered to witnesses during testimony

19. The Registry informed the Chamber that it has all the necessary qualified personnel to provide psychological assistance to traumatised, or otherwise vulnerable witnesses and that no other persons should be allowed to be present during hearings, unless they have been carefully evaluated and tested.³⁵

20. The Chamber takes note of the Registry’s assurance that it has all the required personnel available to provide assistance during hearings. It also acknowledges the Registry’s suggestion that in principle only specially trained Registry personnel

³² “Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial”, 16 January 2009, ICC-01/04-01/07-842-Conf-Anx, par. 49

³³ *Prosecutor v. Thomas Lubanga*, “Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial”, 30 November 2007, ICC-01/04-01/06-1049 and “Decision regarding the Protocol on the practices to be used to prepare witnesses for trial”, 23 May 2008, ICC-01/04-01/06-1351

³⁴ ICC-01/04-01/07-842-Conf-Anx

³⁵ ICC-01/04-01/07-842-Conf, par. 7

should provide in-court assistance, but the Chamber does not consider it opportune to lay down any strict rules on this issue, bearing in mind the rather open-ended nature of rule 88(2), which requires a certain degree of flexibility. As a general matter, the Chamber is of the view that in principle witnesses are expected to testify without assistance and that the Chamber must be informed, if assistance is required, the type thereof and the identity of the person who will provide it, in advance of the hearing at which the witness is scheduled to testify.

21. The Registry requested that the party calling a witness to testify at trial should inform the VWU of any specific vulnerability of the witness at least 35 days prior to the arrival of the witness in The Hague. It further stated that the request for specific protective measures should be included in the service request form required by the VWU.³⁶

22. The Chamber does not consider a notice period of 35 days unreasonable and notes that none of the parties has expressed any opposition to it. Accordingly, the Chamber urges the parties to respect the request by the Registry or to alert the latter as soon as possible if, for reasons beyond their control, they cannot honour the 35 day period.

G. Number of witnesses on 'standby'

23. The Registry advises the Chamber to determine that a number of witnesses should be present at the seat of the Court, before it is their turn to testify. This practice is said to be necessary to avoid any 'gaps' in the proceedings if the testimony of the preceding witness ends earlier than initially planned. However, according to the Registry, in order to guarantee the physical and psychological well-being of the witnesses, the duration of the stay of witnesses at the seat of the Court should be kept as short as possible. To that end, the Registry suggests that the

³⁶ Id., par. 12-14

Chamber should determine the number of witnesses who should be on 'standby' at any given time prior to the start of the trial.³⁷

24. The Chamber takes note of this suggestion, but considers that before it can decide on the number of witnesses to be on standby, the Chamber needs to know the exact order in which they will testify and the projected length of their testimony. Only the Prosecution can provide this information, once it has decided how it will present its case. The Chamber therefore invites the Prosecution to inform the Chamber at the earliest possible moment about the exact order in which it proposes to call its witnesses, together with an estimate of the duration of its questioning.

H. Contact with witnesses appearing on behalf of another party, who are not part of the ICC Protection Programme

25. With regard to interviews by counsel for one of the parties with witnesses called by another party, the Registry requests the Chamber to diverge from the practice of Trial Chamber I.³⁸ First, the Registry argues that there is no automatic need for a representative of the VWU to be present during such interviews.³⁹ Second, it suggests that the VWU should not be responsible for organising interviews with witnesses who are not in the ICC Protection Programme ("ICCP").⁴⁰

26. The Chamber notes that there seems to be agreement among all parties that witness interviews can take place without a representative of the VWU being present, unless the witness requests the presence of such a representative. The Chamber accordingly accepts that witnesses, who are not in the ICCPP and who do

³⁷ Id., par. 15

³⁸ *Prosecutor v. Thomas Lubanga*, "Decision on the prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witnesses", 3 June 2008, ICC-01/04-01/0-1372

³⁹ ICC-01/04-01/07-842-Conf, par. 10

⁴⁰ The Chamber recalls that the procedure adopted by Trial Chamber I for interviews of witnesses by an adverse party, provides that contact between the party or participant and the witness shall be made through the VWU and that the latter shall make the necessary arrangements for the interview. ICC-01/04-01/0-1372, par. 14

not ask for assistance during the interview, can be interviewed without a VWU representative being present.

27. However, independent of the wishes of the witness, it is the responsibility of the party calling that witness to ensure that, if he or she is particularly vulnerable or otherwise in need of assistance during the interview, it enters into contact with the VWU well in advance of the scheduled interview in order to arrange for an assessment of the need for assistance by a VWU representative during the interview.

28. With regard to the presence of the party calling the witness during the interview by the adverse party, the Chamber recalls that Trial Chamber I decided that the party calling the witness is entitled to have a representative present during the interview, unless the interviewing party objects to such presence and applies to the Chamber for a ruling on the matter.⁴¹ The Chamber sees no reason to depart from this arrangement, as it allows for all possible eventualities. The Chamber's only additional comment is that, if the witness wishes that the interview take place without a representative of the party calling him or her, there is no need for an application to the Chamber, as the witness's consent in such a case is conditional upon the absence of the party calling him or her. The Chamber reiterates in this respect that interviews can only take place if the witness him or herself consents. This consent must be given voluntarily. The party calling the witness is prohibited from trying to influence the witness's decision as to whether or not to agree to be interviewed by Counsel of another party.

29. As to the question of whether the VWU should be responsible for making the practical arrangements for interviews of witnesses who are not included in the ICCPP, the Chamber recalls that Trial Chamber I decided that once the party wishing to interview a witness has obtained the latter's consent through the

⁴¹ ICC-01/04-01/06-1372, par. 11

intermediary of the party calling the witness⁴², it shall enter into contact with the witness through the VWU, who shall be responsible for making the necessary arrangements for the interview.⁴³

30. However, the Chamber considers that in some circumstances it may be more efficient and better for the security and well-being of the witness if the party calling the witness remained responsible for liaising with him or her in order to make practical arrangements. This is particularly the case when the party calling the witness is the only one having been in contact with the witness and having established lines of communication with the person. In such cases, the VWU may not be aware of the existence of the witness prior to the request for an interview by another party. It is the responsibility of the party calling the witness to introduce the VWU to the witness and to assist in liaising between them if they so wish.

31. In case the witness or the party calling him or her considers that the interview should take place at a different location from the place where the witness is staying, the VWU shall be responsible for selecting an appropriate and neutral venue, in coordination with the party wishing to interview the witness. The VWU shall also be responsible for transporting and accompanying the witness from the location where he or she resides to the location where the interview will take place.

I. Witnesses who are also participating as victims in the case

32. The Chamber notes the Registry's affirmed intention to follow the procedure adopted by Trial Chamber I with regard to certain practicalities regarding

⁴² The Chamber recalls, in this respect, that, as a general rule, Defence teams may not enter into contact directly with witnesses of the Prosecution and that when they consider it necessary speak to them, they should first obtain the witness' consent, through the intermediary of the Prosecution. "Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de procédure et de preuve (ICC-01/04-01/07-902)", 7 April 2009, ICC-01/04-01/07-1099, par. 31

⁴³ Id., par. 14

individuals who have the dual status of witness and victim.⁴⁴ None of the parties raised any points in relation to the Registry's intention, but both Defence teams expressed their firm opposition to the possibility that victims who participate in the proceedings should be allowed to testify.⁴⁵

33. The Chamber will address the fundamental issue of witnesses with dual status in due course and will therefore not consider the matter any further in the present decision.

34. With regard to the intention of the Registry to follow the practice of Trial Chamber I on the exchange of information between the parties and the services of the Registry about victims with dual status, the Chamber notes the Prosecution's suggestion that the procedure adopted by Trial Chamber I needed to be adapted because it assumed that in the present case applications for participation would not be redacted. However, the Chamber recalls that, since the Prosecution made these submissions, it instructed the VPRS, in collaboration with the VWU, to propose redactions in the applications for participation and submit them to the Chamber for approval.⁴⁶ The Chamber therefore considers that the Prosecution's suggestion has now become moot.

J. Testimony via video link

35. The Defence for Mr. Katanga has raised questions about testimony being given via video link. It submitted that "the giving of video link evidence from a 'remote location' should be regarded as an exception to the giving of testimony at the seat of the Court and to be exercised rarely" and that the parties should have the

⁴⁴ *Prosecutor v. Thomas Lubanga*, "Decision on certain practicalities regarding individuals who have the dual status of witness and victim", 5 June 2008, ICC-01/04-01/06-1379

⁴⁵ ICC-01/04-01/07-847-Conf, par. 8 ; ICC-01/04-01/07-858, par. 25

⁴⁶ «*Décision relative au traitement des demandes de participation*», 26 February 2009 ICC-01/04-01/07-933, par. 49-51

right to have a representative present at the point of transmission.⁴⁷ Moreover, the Defence for Mr. Katanga argued that “the party seeking to introduce testimony by video-link should apply to the Chamber for authorisation, which should be granted on a case-by-case basis and only where the party establishes that the use of video-link in the particular circumstances of the witnesses concerned is in the interests of justice”.⁴⁸

36. In this regard, the Chamber reminds all parties that, according to rule 67 of the Rules, live testimony by means of audio or video-link technology is subject to the authorisation of the Chamber and the precondition that the technology permits the witness to be examined by the parties and the Chamber at the same time the witness testifies. The Chamber will rule on any specific request for remote testimony on a case-by-case basis and order such measures as it deems necessary to ensure the rights of the accused to examine witnesses against them under the same conditions as the Prosecution, in accordance with article 67(1)(e).⁴⁹

37. To avoid any practical difficulties or delays, the Chamber urges all parties, if they wish to request authorisation to introduce live witness testimony from outside the courtroom, to apply well in advance of the date the witness is scheduled to appear and in any event not later than 35 days before that time.⁵⁰

K. Lingala interpretation

38. With regard to the interpretation into Lingala, the Chamber recalls that the Registry, in its written and oral submissions, argued that the decision of Pre-Trial

⁴⁷ ICC-01/04-01/07-857-Conf, par. 20

⁴⁸ *Id.*, par. 21

⁴⁹ *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on various issues related to witness’ testimony during trial”, 29 January 2009, ICC-01/04-01/06-1140, par. 41-42

⁵⁰ See paragraph 22 of the present decision.

Chamber I⁵¹, granting Mr. Katanga the right to have interpretation during the hearings, was limited to the confirmation proceedings and that the Chamber should issue a new decision on this point.⁵² The Chamber ordered the Registry to submit an additional report on the question of interpretation into and from Lingala and invited the parties to respond to it.⁵³

39. In its report of 21 January 2009⁵⁴, the Registry argued that “a language which one fully understands and speaks normally applies to one’s “native language/mother tongue” and that “if a language of reference is to be identified for Mr. Katanga it should rather be a combination of Swahili, Kingwana and Lingala than one single language”.⁵⁵ In other words, the Registry appears to express doubts about whether Lingala is a language which Mr. Katanga ‘fully understands and speaks’ in the sense of article 67 (1)(a) and (f). Moreover, the Registry unequivocally stated that it had “no doubt that French is the language which Mr. Katanga fully understands and speaks.”⁵⁶

40. In its response of 4 February 2009, the Defence for Mr. Katanga accepts that “[t]he question as to whether Mr. Katanga speaks and understands French fully is still open, given that neither the Appeals Chamber nor the Pre-Trial Chamber has yet applied the standard set out by the Appeals Chamber”.⁵⁷ However, the Defence argues that the Chamber should “only revisit the decision to grant Mr. Katanga’s firm request for interpretation of the trial proceedings into Lingala if it has no

⁵¹ “Decision Implementing the Appeals Chamber Judgement concerning Languages”, 2 June 2008, ICC-01/04-01/07-539

⁵² “Response to the questions raised by Trial Chamber II on 13 November 2008 and additional observations”, 24 November 2008, ICC-01/04-01/07-765, p. 8; ICC-01/04-01/07-T-53, p. 47, lines 18-25

⁵³ «Ordonnance enjoignant aux participants et au Greffe de déposer des documents complémentaires», 10 December 2009, ICC-01/04-01/07-788, par. 14

⁵⁴ “Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage”, 21 January 2008, ICC-01/04-01/07-843

⁵⁵ Id., par. 13

⁵⁶ Id., par. 14

⁵⁷ Defence for Germain Katanga, “Defence Response to the ‘Report of the Registrar on the Provision of Lingala Interpretation for German Katanga at the Trial Stage’”, 4 February 2009, ICC-01/04-01/07-871, par. 2

reasonable doubt that Mr. Katanga's level of French reaches the high level of fluency as required under Articles 67(10)(a) and (f)."⁵⁸ In this respect the Defence argues that the Chamber "must give credence to the accused's claim that he or she cannot fully understand and speak the language of the Court."⁵⁹

41. The Prosecution agrees with the Registry's position⁶⁰ that Mr. Katanga fully speaks and understands French and that he is capable of following the proceedings in that language.⁶¹ In support of this opinion, the Prosecution submitted two annexes, the first of which is a "Procès-verbal d'audition" of 20 January 2006, made by the authorities in the Democratic Republic of Congo, in which Mr. Katanga chose French as his language of choice for the interrogation.⁶² The second document is a hand-written statement, in French, drafted and signed by Mr. Katanga while in detention at the seat of the Court.⁶³ The Prosecution further points out that Mr. Katanga, out of his own free will, followed the confirmation hearings from the detention centre, rather than attending the proceedings. This is relevant, according to the Prosecution, because he could only have received footage in French or English and that, according to his own Defence, this did not raise an issue of unfairness.⁶⁴ According the Prosecution, Mr. Katanga also did not make use of the interpretation provided during some hearings and apparently seemed to be following the proceedings in French.⁶⁵

⁵⁸ Id., par. 3

⁵⁹ Id., par. 6

⁶⁰ See paragraph 39 of the present decision.

⁶¹ «Requête de l'Accusation au sujet du «Report of the Registrar on the Provision of Lingala Interpretation for Germain Katanga at the Trial Stage», 4 February 2009, ICC-01/04-01/07-870, par. 7

⁶² ICC-01/04-01/07-870-Conf-AnxA

⁶³ ICC-01/04-01/07-870-Conf-AnxB

⁶⁴ ICC-01/04-01/07-870-Conf, par. 7

⁶⁵ Id.

42. The Chamber first recalls the relevant paragraph of the Appeals Chamber's judgment of 27 May 2008⁶⁶:

“the language requested [by the accused] should be granted unless it is absolutely clear on the record that the person *fully* understands *and* speaks one of the working languages of the Court and is abusing his or her right under article 67 of the Statute. An accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, non-technical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated. Ultimately, the Chamber in question is responsible for ensuring the fair trial of the accused.”⁶⁷

43. The Chamber considers that this test is clear. In order to determine whether or not the accused fully speaks and understands a working language of the Court, the Chamber should, in principle, take the accused at his or her word. It is only when the Chamber considers that it is established ‘beyond any doubt’ that the accused misrepresents his or her command of one of the working languages of the Court, that the Chamber may deny a request for interpretation into a non-working language.

44. The Chamber considers that neither the Registry nor the Prosecution have been able to demonstrate ‘beyond any doubt’ that Mr. Katanga does understand and speak French fully, according to the stringent test laid down by the Appeals Chamber. Consequently, they have not been able to establish that Mr. Katanga is abusing his right under article 67 of the Statute.

45. However, the Chamber is of the view that there are a number of elements in the record that tend to indicate that Mr. Katanga's command of the French language

⁶⁶ “Judgment on the appeal of Mr. Germain Katanga against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Request Concerning Languages”, 27 May 2008, ICC-01/04-01/07-522.

⁶⁷ *Id.*, par. 61

is of an elevated level. In order to ascertain whether his level of comprehension reaches the standard provided for in article 67 of the Statute, the Chamber considers it necessary to appoint an expert who can independently assess Mr. Katanga's level of French. The Chamber is aware that imperfect command of a language can easily be feigned and that simply subjecting Mr. Katanga to a language proficiency test may not yield a conclusive result. The expert is therefore instructed to examine the record and to propose an appropriate test in accordance with his or her findings. The Defence of Mr. Katanga and the Registry must provide full cooperation to the expert and provide him or her with all information her or she requests. In case of dispute, the matter shall be brought to the Chamber's attention immediately.

46. Moreover, before authorising a request for interpretation into a non-working language, the Chamber must consider whether the proposed interpretation will indeed remedy the problem of the imperfect command of one of the working languages of the Court. If the Chamber concludes that interpretation will not significantly enhance the accused's understanding of the proceedings, there seems very limited advantage in providing it. Such a conclusion may be based upon the fact that the accused does not master the language into which he or she requests interpretation to be provided significantly better than one of the working languages of the Court he or she understands. It may also be based on the fact that the quality of the interpretation into the language requested, which the Court can realistically provide, is of such a level that it does not significantly improve the accused's ability to follow the proceedings. This may be the case, for example, if the language in question does not have a developed legal vocabulary.

47. Accordingly, even if the Chamber concluded, on the basis of an independent expertise, that the accused does not fully understand and speak one of the working languages of the Court, in accordance with the test of article 67 of the Statute as

interpreted by the Appeals Chamber⁶⁸, this does not necessarily determine the issue. It must first ascertain whether there are deficiencies in the interpretation that can reasonably be provided and whether the accused actually understands that language. If the Chamber is of the view that no significant advantage is to be gained from providing interpretation, it should not be afforded. In other words, when the accused is reasonably competent in one of the working languages of the Court, interpretation will only be provided as of right when the quality of the interpretation and the level of understanding and speaking of the accused of the language into which interpretation is requested reach a significantly higher level.

48. The Chamber considers that this is also a factual question, which can only be resolved by with the help of a qualified expert, who can report to the Chamber about the degree of accuracy of the interpretation of court proceedings into Lingala. The expert shall base his or her opinion on audio recordings of previous hearings, held in the present case, and compare the original language spoken with the interpretation into Lingala. At the same time, the expert will be asked to devise a test in order to assess Mr. Katanga's level of understanding in Lingala.

L. Hearing Schedule

49. The Registry reminded the Chamber that, due to a number of practical and logistical constraints, it is necessary to coordinate carefully with other Chambers who need to make use of the limited number of courtrooms that are at the disposal of the Court.⁶⁹ The Chamber takes due notice of this necessity and invites the Registry to initiate the required consultation between Chambers at a convenient moment.

⁶⁸ See paragraph 43 of the present decision.

⁶⁹ ICC-01/04-01/07-821, p. 9

FOR THESE REASONS,

THE CHAMBER

NOTES the various requests by the Registry to respect a minimum notice period and **EXPECTS** the parties to comply with them, in particular:

- To inform the Registry minimum two weeks in advance if use of visual aids is required during a hearing;
- To inform the Registry at least 35 days prior to the arrival of a witness at the seat of the Court of the time required by a witness to read his or her prior statements and/or declarations;
- To inform the Registry at least 35 days prior to the arrival of a witness at the seat of the Court of any specific vulnerabilities witnesses may have;

If, for reasons beyond their control, parties are unable to honour the 35 days period of advance notice, they are urged to do their utmost to consult with the Registry as soon as possible.

ORDERS the parties to submit requests for permission for the introduction of testimonial evidence via video-link at least 35 days prior to the scheduled testimony of a witness.

DECIDES that the party calling a witness shall be responsible for assisting the Victims and Witnesses Unit with liaising with that witness for the purpose of making practical arrangements for interviews with Counsel of another party. If the interview cannot take place within a short distance from the place where the witness resides, the Victims and Witnesses Unit shall be responsible for selecting a neutral location and for organising the transport to and from that location.

DECIDES that a representative of the Victims and Witnesses Unit must not be present during interviews of witnesses by Counsel of the adverse party, unless the witness requests this, or the party calling the witness informs the Victims and Witnesses Unit of a particular vulnerability of the witness.

INSTRUCTS the Registry to compile a list of independent and neutral experts who can assist the Chamber in assessing Mr. Katanga's level in the French language, no later than 22 May 2009 at 4 p.m.


INSTRUCTS the Registry to compile a list of independent and neutral experts who can advise the Chamber on the quality of interpretation into Lingala and who can assess Mr. Katanga's command of that language, no later than 22 May 2009 at 4 p.m.

ORDERS all parties and the Registry to provide full cooperation with both experts, once they have been instructed by the Chamber.

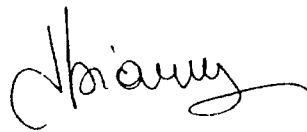
INVITES the Prosecution to inform the Chamber about the exact order in which it intends to call its witnesses and the estimated time needed for its questioning.

INVITES the Registry to initiate consultations with the Chambers in order to draw up the hearing schedule.

Done in both English and French, the English version being authoritative.



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Hans-Peter Kaul

Dated this Thursday, 14 May 2009

At The Hague